IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27-3-2007

Coram

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.A.Nos.2832 of 2001
W.A.M.P.No.1693 of 2006

A. Manoharan ... Appellant/Petitioner

Vs.

1. The Chairman,
Tamil Nadu Electricity Board,
Madras - 600 002.

2. The Chief Engineer/Distribution,
Madras Region, Tamil Nadu Electricity Board,
Madras - 2.

3. Superintending Engineer,
Tamil Nadu Electricity Board,
MEDC/South, Madras - 2. ... Respondents/Respondents

These writ appeals are preferred under Clause 15 of Letters Patent against the order of the learned single Judge in W.P.No.12209 of 1995 dated 22.6.2001. The Writ petition filed under Article 226 of the constitution of India prayed that this Hon'ble Court may please the issue a writ of Certiorarified Mandamus calling for the records in respect of the impugned proceedings of the 3rd respondent vide Proc.Memo.No.1741/Admn.1/A4/MEDC/S/D.P.No.551/93 dated 9.12.1994 and the order of the 2nd respondent vide proc.Memo.No.000672/6/c-II/95-2 dated 28.7.95 and to quash the same and direct the respondents to reinstate the petitioner herein in service with back wages, monetary and other benefits.

For Appellant : Mr.M.Radhakrishnan
for Mr.S.N.Ravichandran

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

For Respondents : Mr.M.Vaidyanathan (TNEB)

JUDGMENT

N. PAUL VASANTHAKUMAR, J.

This writ appeal is directed against the order of the learned single Judge made in W.P.No.12209 of 1995 dated 22.6.2001 dismissing the writ petition filed by the appellant herein.

2. The brief facts necessary for disposal of the writ appeal are that the appellant was appointed as Helper in the Tamil Nadu Electricity Board on 17.10.1981 and completed his probation. The third respondent through his proceeding dated 26.11.1993 suspended the appellant on the ground that he got appointment in TNEB by producing false experience certificate. On 30.12.1993, the third respondent issued charge memo and the same was denied by the appellant by submitting explanation. Thereafter an enquiry was conducted. During enquiry, the appellant stated that he did not produce any false certificate and he is not having copy of the certificate. It is the case of the appellant that the Enquiry Officer proceeded on the basis that there is vigilance report against the appellant and in spite of the demand to furnish copy of the certificate, it was not furnished by him. It is further stated that no person from the Public Works Department was examined in spite of appellant's request and no one submitted any contra record to show that the appellant never worked in the Public Works Department. After enquiry a show cause notice was issued on 30.9.1994 and thereafter on 9.12.1994 appellant was removed from service. Appellant preferred an appeal on 6.1.1995, which was also rejected on 28.7.1995 by the second respondent. Hence the appellant filed W.P.No.12209 of 1995 and challenged the order of the original authority as well as appellate authority and prayed for reinstatement with backwages and other benefits. The main reason stated in the affidavit for challenging the said orders is that the impugned order was issued without taking into consideration the relevant facts. It is further contended that the allegation is that the appellant produced false experience certificate in the year 1981, but only after verification of the said certificate, appellant was appointed in TNEB and after the lapse of several years, charge memo was issued and enquiry was conducted in the year 1994 based on which removal order is passed, which is unsustainable.

3. The writ petition was dismissed by the learned single

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Judge holding that the enquiry was conducted properly and no case is made out to interfere with the award of punishment. As against the said dismissal of the writ petition this writ appeal is preferred.

4. The learned counsel for the appellant aruged that the Government issued G.O.Ms.No.50 P&AR Department, dated 19.11.1996 and ordered to absorb the retrenched personnel in various departments and further ordered that a list of retrenched candidates shall be submitted by the District Collector concerned. Pursuant to the said order, the District Collector, Madras, submitted a list of 57 candidates through his proceedings dated 25.5.1981 to the TNEB in which petitioner's name is listed as Sl.No.55. It is further submitted that in the said communication, the District Collector directed the candidates to appear before the concerned appointing authority for getting necessary posting orders. The date of birth, community, educational qualification and total length of service of the retrenched candidates and whether they were sponsored for appointment by the District Employment Officers at the first instance, were directed to be verified at the time of appointment. Based on the said communication of the District Collector, the Electricity Board verified the appellant's credentials and appointed him. It is further submitted that the appellant was directed to produce his educational certificates, proof for date of birth, community certificate and two conduct certificates obtained after 1.6.1981 and the originals were also directed to be produced for verification on 4.7.1981 at 10.30 a.m/1.30 p.m. and the appellant appeared for verification of the said certificates and thereafter by order dated 23.7.1981 appellant was provisionally selected for appointment to the post of Helper in Class-IV service of the Board. The appellant was given posting order on 15.10.1981 and he joined in service and thereafter he was promoted as Assessor permanently with effect from 4.2.1985 by the order of the Superintending Engineer, MES South, Chennai-2.

5. The learned counsel for the appellant further contended that the appellant was appointed after thorough scrutiny of his certificates by the respondents and after expiry of more than 12 years, it is not open to the respondents to reopen the issue. It is also contended that the Enquiry Officer gave his finding on the ground that the appellant has not proved his innocence. The appellant gave reply that he had handed over the documents to the District Collector and he did not get them back. On the basis of the same, the learned counsel further contended that if at all the respondents are interested in finding out the truth, they could

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

have called for the files from the District Collector, who recommended the appellant's name along with 56 other persons as stated supra and without perusal of the same, the finding given by the Enquiry Officer holding that the appellant produced false experience certificate, is erroneous and the decision taken by the third respondent on the basis of the erroneous enquiry report to remove the appellant from service as well as rejection of the appeal by the second respondent are illegal.

6. The learned standing counsel appearing for the Tamil Nadu Electricity Board/the respnodents herein submitted that it is true that the District Collector submittted the list of candidates, wherein the appellant's name finds a place and the appellant having secured appointment on the basis that he was a retrenched employee, it is for him to prove that he has got a valid experience certificate, but when opportunity was given to the appellant, he failed to produce the same and therefore the Enquiry Officer found that the charge against the appellant is proved and based on the proven charge, the third respondent removed the appellant from service and the appellate authority also confirmed the same, which is rightly upheld by the learned single Judge.

7. We have considered the rival submissions made by the learned counsel appearing for the appellant as well as the learned standing Counsel for the Tamil Nadu Electricity Board/the respondents herein and perused the order of the learned single Judge and the documents on record.

8. It is not in dispute that the appellant's name along with 56 others was sponsored by the District Collector, Madras, through his proceeding dated 25.5.1981 following the guidelines issued in G.O.Ms.No.50 P&AR Department, dated 19.11.1976. In the list, appellant's name found a place in Sl.No.55. In the order of the District Collector dated 25.5.1981 itself it is stated that the candidates should appear before the appropriate appointing authority for obtaining necessary posting orders and the appointing authority shall verify the particulars like the date of birth, community, educational qualification and total length of service of the retrenched candidates and whether they were sponsored for appointment by the District Employment Officer at the first instance. It is the specific case of the appellant that after thorough scrutiny of the said documents including the one, which is now disputed i.e, total length of service of the appellant, who is also a retrenched employee of the Public Works Department on 4.7.1981, the appellant was given appointment by order dated 23.7.1981 as Helper under Rule 106(a)(i) of the Tamil

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Nadu Electricity Board Service Regulations. It is also not in dispute that the appellant was given promotion as Assessor from 4.2.1985. It is the specific case of the appellant before the Enquiry Officer that he was not having the service certificate issued by the Public Works Department and the same was handed over to the District Collector and only after ascertaining the genuineness of the said certificate, the District Collector sponsored the name of the appellant for appointment through his letter dated 25.5.1981. Therefore the Enquiry Officer is not right in shifting the burden on the appellant to prove his innocence by producing the experience certificate.

9. Since the appellant has taken such a specific stand before the Enquiry Officer, it is incumbent on the part of the Enquiry Officer to call for the file from the District Collector, Madras, and ought to have ascertained the genuineness of appellant's claim with regard to his previous service in the Public Works Department. Admittedly the Enquiry Officer has not taken any such step to call for the file from the District Collector, Madras. In the absence of verification of the file from the District Collector's office by the Enquiry Officer and having regard to the communication of the District Collector, dated 25.5.1981 sponsoring the appellant's name along with 56 others, it has to be presumed that the District Collector, after verifying the service certificate, sponsored appellant's name as it is an official act regularly performed by the District Collector. The presumption under section 114 of the Indian Evidence Act is in favour of the appellant.

10. As rightly contended by the learned counsel for the appellant, the Electricity Board, while appointing the appellant, without verifying the genuineness of the claim, ought not to have selected the appellant and appointed him as Helper. If there is any failure to verify the required certificates at the time of selection/appointment, the officials of the Board alone should be blamed, and not the appellant, who admittedly is not having the experience certificate as contended before the enquiry officer. The respondents shall also be blamed for not initiating action in time, if there is any ground to take action against the appellant. The impugned actions are initiated after a long lapse of time i.e., more than 10 years from the date of appellant's appointment and about 7 years after he was given promotion as Assessor.

11. The learned counsel for the respondents submitted that the Vigilance report dated 3.8.1983 submitted by the Police was the basis for issuing charge memo and initiation of proceedings.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

A copy of the vigilance report is filed in the typed set of papers, in which it is stated that the enquiry reveal that the Division was already wound up long back and the information can be gathered from the present Assistant Engineer/PWD, Royapuram, Madras-21. The said report nowhere states that when the Division was closed and whether during the time when the appellant was said to have been appointed in Public Works Department, there was a Division among other things. Hence we are of the view that no weightage can be given to the said vigilance report dated 3.8.1993. which is admittdly bereft of particulars.

12. The Enquiry Officer's finding having been found as perverse by us, the same cannot be the basis for removal of the appellant from service and consequently the impugned orders of removal from service as confirmed by the second respondent in appeal, without discussing anything on merits are unsustainable. The learned single Judge also failed to advert to the said aspect, particularly the sponsorship of the appellant's name for appointment by the District Collector through his proceeding dated 25.5.1981 and after satisfying the requirements, the appellant was appointed by TNEB and therefore we are unable to subscribe the decision taken by the learned single Judge.

13. In view of the above finding, we are of the view that the impugned order of removal passed by the third respndent as confirmed by the second respondent and upheld by the learned single Judge is unsustainable. The appellant is out of employment from 9.12.1994 to till date. We set aside the order of removal only on the ground that the respondents failed to call for the files from the District Collector and not verified the genuineness of the appellant's service certificates. Having regard to the lapse of time and the age of the appellant as of now, we are of the view that ends of justice would be met by denying backwages to the appellant from 9.12.1994 to the date of reinstatement on the principle of 'No work - No pay'.

14. In the result, the writ appeal is allowed. The order of removal of the appellant from service, confirmed in appeal and upheld by the learned single Judge is set aside. The respondents

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

are directed to reinstate the appellant in service with continuity of service, without backwages, within four weeks from the date of receipt of copy of this order. No costs. Connected miscellaneous petition is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

vr

To

1. The Chairman, Tamil Nadu Electricity Board,
   Madras - 600 002.

2. The Chief Engineer/Distribution,
   Madras Region,Tamil Nadu Electricity Board,
   Madras - 2.

3. The Superintending Engineer,
   Tamil Nadu Electricity Board,
   MEDC/South, Madras - 2.

RS (CO)
km/2.4.

W.A.No.2832 of 2001

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/